Supreme Court, U.S.
FILED

98 1237 OCT 19 1998

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

ABD EL-HAMID A. EL-FADLY,

Petitioner

v

CITY OF LOS ANGELES, ET AL.,

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals

PETITION FOR WRIT OF CERTIORARI

A. EL-FADLY
Petitioner in Pro Per
18535 Mayall St., #G
Northridge, CA 91324
(818) 886-6536

18 pp

QUESTIONS PRESENTED

Preface: For the readers to understand the following questions, he needs a brief introductory statement for them to set the scene so that the questions may be understood.

Therefore, Petitioner requests from the readers to read the **Statement of the Case** at pages 3 and 4 before they read the questions.

Questions:

1. Does the second Judge have the authority to cancel the order of the first Judge for a trial hearing for this case?

2. Is it not true the second Judge only can change the date of the trial hearing as set by the first Judge to fit her agenda and not to eliminate the first Judge's order of having a trial hearing for this case?

3. Is it not true that the second Judge should not abort a summary judgment motion from the defendant attorney because the first judge already investigated this case and decided to have a trial hearing for it?

4. Is it not true, for a case like this that has strong evidence of discrimination and retaliation and is dismissed by the court without having a trial hearing (although the first Judge scheduled a trial hearing for this case), it will have **impact on the public**, such as discouraging the **victims** of discrimination or retaliation to go to the court, and will encourage the **prejudice** to discriminate and retaliate more.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the memorandum, order and letter below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A, B and C, pages 9 to 14, to the petition and is unpublished.

JURISDICTION

1. The memorandum of the United States Court of Appeals which denied petitioner's case was filed on May 26, 1998 (please see Appendix A, at pages 9 and 10).

2. The order of the United States Court of Appeals which denied petitioner's petition for rehearing filed on July 20, 1998 (please see Appendix B, at pages 11 and 12).

STATEMENT OF THE CASE

This case is about discrimination and retaliation. It was **filed in 1991**. This case has many discrimination and retaliation incidents. Each incident could be a strong case by itself. Also **two judges** worked on this case.

The first judge, at the **end of 1995**, after he worked on this case more than four years and read what my witnesses would testify, he assigned **a trial date to this case as of February 6, 1996**.

The first judge was promoted to the Court of Appeals and left the District Court in January 1996. **The second judge** (Hon. Kim Wardlaw) who took over my case **vacated the trial date (February 6, 1996)** for this case and proceeded as follows:

She asked for a settlement and petitioner agreed to discuss it. When the settlement did not work out, she asked the defendant attorney to file a summary judgment motion.

Petitioner could not complete his response before or on its due date and asked for two weeks of extension time and the court granted his request. Then petitioner was still unable to complete his response and submitted it incomplete and requested another extension of time

and the court **did not grant his request that time**. Petitioner also **did not include in his response a declaration.**

Hon. Kim Wardlaw granted the motion for summary judgment for defendant and dismissed the case. Petitioner appealed that order on the basis of **Abuse the Discretion**. The United States Court of Appeals denied the petitioner's appeal. The Court of Appeals memorandum was filed on May 26, 1998 (please see Appendix A, at pages 9 and 10). Petitioner filed a petition for rehearing en banc. Then the United States Court of Appeals issued an order denying his petition for rehearing and his motion to file a declaration. This order was filed on July 20, 1998 (please see Appendix B, at pages 11 and 12).

Please note that this case was not for publication. (Please see Appendixes A and C, at pages 9, 10, 13 and 14.)

REASONS FOR GRANTING THE WRIT

1. The first judge **already heard the case and read what my witnesses would testify and decided that this case should go to trial hearing.** Therefore the second judge **should not cancel that order (for trial hearing) and should have a trial hearing for this case.**

2. **The summary judgment for the discrimination and retaliation cases is not appropriate.** However, if any judge wants to use the summary judgment in the discrimination and retaliation cases, the judge should use it **without abusing the discretion** such as:

   a. If pro se **did not file a declaration with his response** to the motion for summary judgment, the court should take his oath or ask the pro se to file a declaration and **not dismiss the case for a small reason like that.**

   b. The court should be **patient with the pro se plaintiffs and give them enough time to complete their responses.**

3. Please note that it is **too late for the second judge** to ask about a **summary judgment** motion for this case **because the first judge was already scheduled February 6, 1996** to be the trial hearing for this case.

WHAT PETITIONER WANTS THE SUPREME COURT TO DO

A. Petitioner Request:

1. To enable petitioner to have a trial hearing for this case.

2. To make this case available for publication.

B. Petitioner Argument:

1. The reason for request number 1 is that the petitioner has a strong case with numerous strong evidence. This is not only the petitioner's opinion but also the opinion of the first Judge who scheduled February 6, 1996 to be the trial hearing for this case. Please note that the first Judge had this case more than four years.

2. The reason for request number 2 is that the victims of discrimination and retaliation and their attorneys should see what happened in the petitioner's case such as he did not only lose the case but he even was denied to

have a trial hearing even the first Judge issued an order to have a trial hearing for this case.

To make this case available for publication will help the other victims of discrimination and retaliation and their attorneys to make a wise decision if it is worth it to go to the court or not.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ABD EL-HAMID EL-FADLY

DATE: October 16, 1998

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 26, 1998

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ABD EL-HAMID A. EL-FADLY,	No. 96-56408
Plaintiff-Appellant,	CD. C. Nos.:
	CV-91-03301-KMW
v.	CV-92-06415-KMW
CITY OF LOS ANGELES; DEPT. OF PUBLIC WORKS; BUREAU OF ENGINEERING	MEMORANDUM*
Defendants-Appellees.	

Appeal from the United States District Court for the Central District of California
Kim McLane Wardlaw, District Judge, Presiding

Submitted May 14, 1998**

Before: SCHROEDER, TROTT, AND FERNANDEZ, Circuit Judges.

Abd El-Hamid A. El-Fadly appeals pro se the district court's summary judgment in favor of defendants in El-Fadly's action alleging he was denied promotions on account

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

of his religion and national origin, and in retaliation for filing discrimination complaints, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a grant of summary judgment de novo, see Warren v. City of Carlsbad, 58 F.3d 439,, 441 9th Cir. 1995), and we affirm.

We agree with the district court that, because El-Fadly failed to show that he was qualified for the promotions he sought, he failed to make a prima facie case of discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). Even if El-Fadly had established a prima facie case, defendant met their burden of offering legitimate, nondiscriminatory reasons for their actions. See Lowe v. City of Monrovia, 775 F.2d 998, 1005 (9th Cir. 1985), amended by, 784 F.2d 1407 (9th Cir. 1986). The district court properly found that El-Fadly failed to establish a prima facie case of retaliation. See Yartzoff v. Thomas, 809 F.2d 1371, 1375 (9th Cir. 1987).

The district court did not err by declining El-Fadly's motions for continuances and proceeding to summary judgment. See Qualls v. Blue Cross of Calif., Inc., 22 F.3d 839, 844 (9th Cir. 1994).

The clerk shall file El-Fadley's amended informal brief which was lodged on August 12, 1997.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUL 20, 1998

CATHY A. CATTERSON, CLERK

U.S. COURT OF APPEALS

ABD EL-HAMID A. EL-FADLY,	)	No. 96-4408
	)	
Plaintiff-Appellant,	)	D.C. Nos.
	)	CV-91-03301-KMW
	)	CV-92-06415-KMW
v.	)	
	)	
CITY OF LOS ANGELES; DEPT. PUBLIC WORKS; BUREAU OF ENGINEERING,	)	ORDER
	)	
Defendants-Appellees.	)	

Before: SCHROEDER, TROTT, and FERNANDEZ, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Appellant's motion to file a declaration is denied.

No further filings shall be filed or entertained in this closed appeal.

APPENDIX C

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street, P. O. Box 193939
San Francisco, CA 94119-3939

August 5, 1998

USDC, Los Angeles
Central District of California, Los Angeles
Office of the Clerk
312 North Spring Street
Los Angeles, CA 90012

C.A. NO.	TITLE	AGENCY/ D.C. NO.
96-56408	El-Fadly v. City of L.A.	CV-91-03301-KMW

Dear Clerk:

The following document(s) in the above listed cause(s) is (are)being sent to you under cover of this letter. Counsel are being served with a copy of this letter only.

[x] Certified copy of the Decree of the Court

[ ] Judgment of the National Labor Relations Board

[ ] Certified copy of the Entry of Dismissal

The record on appeal will follow under separate cover.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

Cathy A. Catterson
Clerk of Court
By: Tina S. Price
Deputy Clerk

Enclosure(s)
CC: ALL COUNSEL, WITHOUT ENCLOSURES

Supreme Court, U.S.
FILED
OCT 18 1998
CLERK

(2)

No. 98-1237

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1998

ABD EL-HAMID A. EL-FADLY,

Petitioner

v

CITY OF LOS ANGELES, ET AL.,

Respondent

On Supplemental Appendix To The Petition For
A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

SUPPLEMENTAL APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

A. EL-FADLY
Petitioner in Pro Per
18535 Mayall St., #G
Northridge, CA 91324
(818) 886-6536

12pp

APPENDIX D

FILED
JUL 31 1996
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY "S/JW" DEPUTY

ENTERED
CLERK, U.S. DISTRICT COURT
AUG - 2 1996
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ABD EL-HAMID A. EL-FADLEY, Plaintiff vs. CITY OF LOS ANGELES; DEPT. OF PUBLIC WORKS; BUREAU OF ENGINEERING	CASE NOS. CV91-3301 KMW(SHx) CV92-6415 KMW(SHx)

After consideration of the papers in support of and in opposition to plaintiff's motion for summary judgment and the oral argument of counsel, the Court makes the following findings of fact and conclusions of law: THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

UNCONTROVERTED FACTS

1. Plaintiff started to work with [the] City of Los Angeles in December 1979, in the Public Works Department, Bureau of Engineering, in the Valley District office. "In 1981 he transferred to Wastewater Systems Engineering Division...downtown. Plaintiff was working the WSED in the Major Sewers Section until April 1990." (Plaintiff's Pretrial Conference statement, Page 5, Lines 4-9.)

2. On August 10, 1990, plaintiff filed a discrimination complaint alleging discrimination on the basis of religion, national origin and retaliation. On December 18, 1990, the EEOC made a "no cause" finding against the plaintiff and, on April 4, 1991, dismissed his complaint. (Plaintiff's Amended Complaint Exhs. H, I and K, Case No. CV 91-3301.)

3. On January 25, 1991, plaintiff filed a new complaint alleging essentially the same grounds. On August 4, 1992, the EEOC

again made a "no cause" finding against him and dismissed his complaint. (Plaintiff's Complaint, Exh. F, Case No. CV 92-6415; Plaintiff's Complaint, Exh. G, Case No. CV 92-6415.) Plaintiff's previous two complaints to the EEOC, alleging essentially the same claims, were determined by Civil Service Commissioners to lack sufficient evidence of discrimination on May 10, 1991, and March 27, 1992. (Defendant's Motion, Exh. I.)

4. Plaintiff received a negative yearly evaluation in April of 1986, which stated that Hamid is only "slowly reaching the productivity expected of him in his classification...[and that] [d]uring the past year Hamid has often been absent from work". This evaluation occurred before plaintiff ever filed a complaint with the EEOC for discrimination. (Plaintiff's Opposition, Exh. G, I.)

5. Plaintiff was required to attend a counseling session with his supervisors after receiving this negative evaluation in order

to work on plaintiff's improvement. (Plaintiff's Opposition to Motion for Summary Judgment, Exhs. G, I.)

6. Plaintiff's interview scores during the 1985 to 1991 period were lower than those of his competitors for promotions, and the panelists who interviewed him during the April to November 1990 period evaluated him as less qualified than his competitors. (Declaration of Frank G. Hodges, Jr. at ¶ 3; Plaintiff's Amended Complaint, Exh. I, Page 37, ¶ 4, and Page 38, ¶¶ 1 and 2, Exh. K, page 45, ¶ 2, Case No. 19-3301; Plaintiff's Complaint, Exh. G, Page 21, ¶¶ 4 and 5, Case No. CV 92-6415.)

7. Plaintiff's promotion applications were often incomplete or inadequate when compared to those submitted by the successful candidates. (Hodges Decl., ¶¶ 2, 3.)

8. Plaintiff was not promoted to Civil Engineering Assistant III or C.E. Associate I because he was not as qualified as the successful candidates. (Hodges Decl.,

¶¶ 2, 3.)

9. The record contains no evidence that the defendant's decision not to promote plaintiff because he was less qualified was a pretext for discrimination.

10. Plaintiff received poor evaluations and productivity reports on a number of occasions. (Amended Complaint (CV 91-3301), Exh. E at 30, Exh. N at 49; Defendant's Motion for Summary Judgment, Exh. L.)

11. Plaintiff was not assigned to certain major work projects because of his poor work performance and evaluations, and his refusal to perform additional assignments.

12. Plaintiff was denied certain requests for sick time and certain requests to work on his "off" days because he failed to comply with departmental policy. (Mohr Decl., ¶¶ 5, 7, 8; Hodges Decl., ¶ 7.)

13. Plaintiff did not suffer any adverse employment decisions.

14. Plaintiff was not required to work

under unreasonable time conditions or perform assignments inconsistent with his duties.

15. Defendant's poor evaluation of plaintiff and criticism of his work performance was not causally linked to the filing of plaintiff's discrimination claim.

CONCLUSIONS OF LAW

16. Plaintiff has failed to establish a prima facie case of discrimination based on religion or national origin, pursuant to *McDonnel Douglas Corp. v. Green*, 411 U.S. 792 (1973), because he has not shown that he was qualified for each of the positions for which he applied, and that, after he was rejected, the positions remained open and the City continued to seek applications from persons with complainant's qualifications.

17. Even if plaintiff had established a prima facie case of discrimination, defendant has rebutted this presumption by providing legitimate nondiscriminatory reasons for the alleged actions against the plaintiff. McDonnel Douglas, 411 U.S. at

802.

18. "In response to the defendant's offer of non-discriminatory reasons, the plaintiff must produce 'specific, substantial evidence of pretext.'" Wallis v. J.R. Simplot Co., 26 F.3d 885, 890 (9th Cir. 1994), quoting Steckl v. Motorola, Inc., 703 F.2d 392, 393 (9th Cir. 1983).

19. Plaintiff has failed to provide any evidence that defendant's legitimate nondiscriminatory reasons for its failure to promote him, assign him work, etc. were a pretext for discrimination and were not the actual reasons for their actions.

20. Plaintiff has not provided any evidence that his national origin or religion played a role in the decision-making processes which led to the alleged actions of which plaintiff complains.

21. Plaintiff has failed to establish a prima facie case of retaliation based upon his filing of a discrimination complaint because he has failed to show that he

suffered any adverse employment decisions, or that there was a causal link between any alleged adverse employment decision and his discrimination complaint. E.E.O.C. v. Hacienda Hotel, 881 F.2d 1504, 1514 (9th Cir. 1989).

22. Even if plaintiff had established a prima facie case of retaliation, defendant has rebutted this presumption by providing legitimate nondiscriminatory reasons for the alleged adverse employment decisions.

23. Plaintiff has failed to put forth any evidence that defendant's "proffered reasons are pretexts for retaliation or that discriminatory reasons more likely motivated the employer's action." Hacienda Hotel, 881 F.2d at 1514.

24. Defendant is entitled to costs.

25. Summary judgment shall be entered in defendant's favor consistent herewith as to both consolidated actions filed by plaintiff (CV 91-3301 KMW; CV 92-6415 KMW).

DATED: July 30, 1996

"S/Kim M. Wardlaw"
KIM McLANE WARDLAW
United States
District Judge

APPENDIX E

Editing the Plaintiff's Memoranda

Introduction: This editing is made for Plaintiff's Memorandum and Amended Memorandum in opposition to motion for Summary Judgment which were submitted to the District Court for the hearings of July 15, 1996, and July 22, 1996 respectively. Plaintiff could not do that editing before he submitted both of his Memorandum, and Amended Memorandum to the District Court because he did not have enough time for filing those memoranda. Plaintiff did this editing, to make it easy

to understand, for anyone who wants to read those memoranda.

The Editing:

A. The editing for Plaintiff's Memorandum Of Points And Authorities In Opposition To Motion For Summary Judgment . . . etc., which was submitted to the District Court for the hearing of July 15, 1996, is as follows:

Page 12 line 11:

Read; ----, at page __).

Should read; ----, at page 21).

Page 12 line 15:

Read; at page __).

Should read; at page 27).

Page 14 line 12:

Read; page __).

Should read; page 31).

Page 14 line 25:

Read; at page __).

Should read; at page 32).

Page 15 line 17:

Read; ----, at page __).

Should read; ----, at page 34).

Page 15 line 28:

Read ---- at page __).

Should read; ---- at page 38).

Page 16 line 9:

Read; _____).

Should read; 39 and 40).

B. The editing for Plaintiff's Amended Memorandum Of Points And Authorities In Opposition To Motion For Summary Judgment . . . etc., which was submitted to the District Court for the hearing of July 22, 1996, is as follows:

Page 31 line 15:

Read; ---- page 29):

Should read; ---- page 31):

Page 32 line 4:

Read; ---- page 30):

Should read; ---- page 31):